

THE CAMBRIDGE YEARBOOK
of
EUROPEAN LEGAL STUDIES



VOLUME ONE
1998

Edited by Alan Dashwood & Angela Ward

THE CENTRE FOR EUROPEAN LEGAL STUDIES, CAMBRIDGE

The Cambridge Yearbook of European Legal Studies provides a new forum for the scrutiny of significant issues in European Union Law, the law of the Council of Europe, and Comparative Law with a “European” dimension, and particularly those which have come to the fore during the year preceding publication. The contributions appearing in the collection are commissioned by the Centre for European Legal Studies (CELS) Cambridge, which is the research Centre of Cambridge University Law Faculty specialising in European legal issues.

The papers presented are all at the cutting edge of the fields which they address, and reflect the views of recognised experts drawn from the University world, legal practice, and the civil services of both the EU and its Member States. Inclusion of the comparative dimension brings a fresh perspective to the study of European law, and highlights the effects of globalisation of the law more generally, and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders.

Each edition will commence with the Mackenzie-Stuart Lecture, established in honour of Lord Mackenzie-Stuart, formerly President of the ECJ, and given each year in the Cambridge Law Faculty. The first Lecturer, in 1997, was Judge G Rodriguez Iglesias, currently President of the European Court of Justice; the second was Mr Jean-Louis Dewost, Director General of the Commission’s Legal Service. Their contributions launch Volume 1.

The Cambridge Yearbook of European Legal Studies is an invaluable resource for those wishing to keep pace with legal developments in the fast moving world of European integration.

THE CAMBRIDGE YEARBOOK OF
EUROPEAN LEGAL STUDIES

Volume 1, 1998

The Cambridge Yearbook of European Legal Studies provides a new forum for the scrutiny of significant issues in European Union Law, the law of the Council of Europe, and Comparative Law with a “European” dimension, and particularly those which have come to the fore during the year preceding publication. The contributions appearing in the collection are commissioned by the Centre for European Legal Studies (CELS) Cambridge, which is the research Centre of Cambridge University Law Faculty specialising in European legal issues.

The papers presented are all at the cutting edge of the fields which they address, and reflect the views of recognised experts drawn from the University world, legal practice, and the civil services of both the European Union and its Member States. Inclusion of the comparative dimension brings a fresh perspective to the study of European law, and highlights the effects of globalisation of the law more generally, and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders.

Each edition will commence with the Mackenzie-Stuart Lecture, established in honour of Lord Mackenzie-Stuart, formerly President of the ECJ, and given each year in the Cambridge Law Faculty. The first Lecturer, in 1997, was Judge G Rodriguez Iglesias, currently President of the ECJ; the second was Mr Jean-Louis Dewost, Director General of the Commission’s Legal Service. Their contributions launch Volume 1.

Editorial Board

- DR. PHILIP ALLOTT, Trinity College Cambridge
PROFESSOR TONY ARNULL, University of Birmingham
CATHERINE BARNARD, Trinity College Cambridge
PROFESSOR ALAN DASHWOOD, Director of CELS
MR DAN GOYDER CBE, Consultant Solicitor, Linklaters and Alliance,
Visiting Professor of Law, King’s College London
PROFESSOR ROSA GREAVES, Durham University
PROFESSOR. BOB HEPPLE, Clare College Cambridge
PROFESSOR DAVID O’KEEFE, University College London
DR. STEPHANIE PALMER, Girton College Cambridge
DAVID VAUGHAN QC, Brick Court Chambers
DR. ANGELA WARD, Assistant Director of CELS
PROFESSOR SIR DAVID WILLIAMS Q.C., Emmanuel College, Cambridge
PROFESSOR D.A. WYATT Q.C., St Edmund Hall, Oxford

CENTRE FOR EUROPEAN LEGAL STUDIES (CELS)
CAMBRIDGE

The Cambridge Yearbook of European Legal Studies

VOLUME 1, 1998

EDITED BY

Alan Dashwood

B.A. (Rhodes), M.A. (Oxon)
of the Inner Temple, Barrister
Professor of European Law, University of Cambridge
Fellow, Sidney Sussex College, Cambridge

AND

Angela Ward

B.A. (Univ. of QLD) LLB (Hons) (ANU), PhD (EUI)
Solicitor of the Supreme Court
Fellow, Magdalene College, Cambridge



HART PUBLISHING
1999

Hart Publishing
Oxford and Portland, Oregon

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
5804 NE Hassalo Street
Portland, Oregon
97213-3644
USA

Distributed in Netherlands, Belgium and Luxembourg by
Intersentia, Churchillaan 108
B2900 Schoten
Antwerpen
Belgium

Distributed in Australia and New Zealand by
Federation Press
John St
Leichhardt
NSW 2000

© the contributors severally, 1999

The editors and contributors to this work have asserted their right under the Copyright, Designs and Patents Act 1998, to be identified as the authors of this work.

Hart Publishing is a specialist legal publisher based in Oxford, England. To order further copies of this book or to request a list of other publications please write to:

Hart Publishing, 19 Whitehouse Road, Oxford, OX1 4PA
Telephone: +44 (0)1865 434459 Fax: +44 (0) 1865 794882
email: hartpub@janep.demon.co.uk

British Library Cataloguing in Publication Data
Data Available

ISBN 1-84113-088-5 (cloth)

Typeset in Sabon
by John Saunders Design & Production, Reading
Printed in Great Britain on acid-free paper
by Biddles Ltd, Guildford and Kings Lynn.

CONTENTS

Editorial: <i>Alan Dashwood</i> and <i>Angela Ward</i>	vii
<i>List of Contributors</i>	xi
<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xxiv
<i>Table of Conventions and Treaties</i>	xxix
<i>Table of Abbreviations</i>	xxxvi
1. Reflections on the General Principles of Community Law <i>Gil Carlos Rodriguez Iglesias</i>	1
2. Maintaining the Community Legal Order in a Changing World <i>Jean-Louis Dewost</i>	17
3. Community Decision-Making After Amsterdam: <i>Alan Dashwood</i>	25
4. Economic and Monetary Union – A Model for Flexibility ? <i>John A. Usher</i>	39
5. The Corpus Juris Project and the Fight Against Budgetary Fraud <i>John Spencer</i>	77
6. Opting Out and Opting In: Problems and Practical Arrangements under the Schengen Agreement <i>Jaap de Zwaan</i>	107
7. The Human Rights Act 1998: Bringing Rights Home <i>Stephanie Palmer</i>	125
8. Some are More Equal than Others: the Decision of the Court of Justice in <i>Grant v. Southwest Trains</i> <i>Catherine Barnard</i>	147
9. Article 13 EC: Mere Rhetoric or a Harbinger of Change? <i>Lisa Waddington</i>	175
10. After <i>Kalanke</i> and <i>Marschall</i> : Affirming Affirmative Action <i>Sandra Fredman</i>	199

11. The Role of National Parliaments in the Making of European Law <i>Timothy Pratt</i>	217
12. Cutting Your Losses in the Enforcement Deficit: A Community Right to the Recovery of Unlawfully Levied Charges? <i>Michael Dougan</i>	233
13. <i>Stichting Greenpeace</i> and Environmental Public Interest before the Community Judicature: Some lessons from the Federal Court of Canada <i>Heather McLeod-Kilmurray</i>	269
<i>Index</i>	307